IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.283 of 1999

Date of decision: 4.4.2006

State of Himachal Pradesh Appellant

Versus

Raka Soni and others Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? NO

For the appellant(s):Mr.Rajan Diwan, Additional Advocate General

For the respondent(s): Mr.Anup Chitkara,Advocate

Deepak Gupta,J.

This appeal by the State is directed against the judgment of the learned Additional Chief Judicial Magistrate, Nalagarh, in Criminal Case No. 2/2 of 1995, decided on 5.12.1998 whereby the accused have been acquitted of the charges leveled against them under Section 498 read with Section 34 I.P.C.

The prosecution case in brief is that Rajni Bala (complainant) was married to Raka Soni on 9.6.1993 at Nalagarh according to Hindu rites. Out of this wedlock one son was born. A complaint was filed by the wife, Rajni Bala with the police to the effect that her parents and relatives gave her a number of gifts at the time of the marriage. After the marriage she was residing with her husband Raka Soni and his family at Kalka. According to her after a few months only the behaviour of the accused i.e. her husband, father-in-law,

mother-in-law, brother-in-law and sister-in-law changed towards her. They started demanding dowry in the shape of a scooter and money for setting up business etc. When her parents could not satisfy their demands they started torturing her on one pretext or the other. She was even slapped by her parents-in-law. Though the complainant was in an advanced stage of pregnancy, her in-laws treated her with cruelty. After the delivery of the child at her parents' house she went back to Kalka when again dowry was demanded from her. According to her on 15.6.1994 her mother-in-law and brother-in-law (accused) poured Kerosene oil on her and her clothes caught fire and she saved herself by running out of the kitchen. She was taken to the Civil Hospital, Kalka where accused persons told every-body that she had tried to commit suicide. The complainant remained quite since she was in a state of shock. On 19.6.1994 the complainant's father alongwith her elder sister visited Kalka. There the mother-in-law of the complainant informed her father that the complainant had tried to commit suicide. She returned with her father to Nalagarh on 25.56.1994. On 10th or 11th July, 1994 the husband came to Nalagarh and asked the complainant to make arrangement for Rs. 50,000/- within a week otherwise he would divorce her. The complaint was filed on 8.8.1994 in the court. This complaint was referred to the police under Section 156(3) Cr.P.C. Thereafter FIR No. 116 of 1994 was registered and matter investigated. The accused

were challaned and summoned. They pleaded not guilty and claimed trial.

The prosecution examined 12 witnesses in support of its case. The learned trial court after considering these statements recorded the statements of the accused under Section 313 Cr.P.C. in which they denied the entire prosecution case. The trial court on the basis of the evidence led before it acquitted the accused. Hence the present appeal.

I have heard Mr. Rajan Diwan, learned Additional Advocate General for the State and Mr. Anup Chitkara, learned counsel appearing for the respondents-accused.

Complainant Rajni was examined as PW-1. She has reiterated most of the facts stated in her complaint. In cross examination she stated that the marriage was solemnized at Nalagarh on 9th June, 1993 at about 8-9.00 p.m. on the same day when the engagement was held. She states that the marriage was solemnized according to Hindu rites and seven steps were taken around the sacred fire. She admits that one Sikh gentleman namely Kuldip was also present at the time of the marriage. According to her the incident of burning on 15th June had taken place at 8.30 a.m. However, in this statement she states that her clothes were not burnt in the said incident. She also admitted that right from January, 1994 till May, 1994 she never informed her parents about the beatings or the demand of dowry by the accused persons. She further admitted that in fact the marriage ceremony was conducted on 20.6.1993 in a Dharamshala at Kalka which was attended

by 300-400 persons. According to her the gifts were given by her parents at Kalka on 20.6.1993 and gold set was given to her at Nalagarh when she visited Nalagarh for the first time after her wedding on 9.6.1993. According to her upto 10.7.1994 she had not told her parents about the way her in-laws had maltreated her and had demanded dowry. In the next breath she has admitted that on 26.5.1994 she had got an affidavit attested at Nalagarh in which she had stated that accused persons used to maltreat her. When she was asked from whom she had got it attested, she stated that she was unaware of this fact and only her brother and father were aware about this.

PW-2 Raj Krishan is the father of the complainant. According to him also the marriage took place on 9.6.1993. He states that somewhere in June, 1994 he brought his daughter to Nalagarh because the accused were harassing her and wanted him to get dowry. He further stated that on 31.7.1994 the husband had demanded Rs.50,000/- as dowry from him. He disclosed that on 9.6.1993 the marriage was celebrated as per the rites of the Sikh religion. He states that no steps around sacred fire were taken. He further admitted that on 20.6.1993 the marriage ceremony was performed in accordance with Sikh rites which was solemnized at Kalka and which was attended by his entire family.

PW-3 is the mother of the complainant. Her statement is to the similar effect. She further sates that the marriage was held at Nalagarh on 9.6.1993 in the evening and the marriage

took only 5 to 10 minutes. She admits that no local residents of Nalagarh or relatives were invited or present when the marriage took place. She admitted that ornaments given to the daughter were given to her of their own free will and no demand was made by the accused at that time. She also admitted that the wedding as per Sikh rites was performed at Kalka later on.

PW-4 Virender Kumar is the brother of the complainant. He states that on 25.6.1994 when his sister was brought to home from Kalka she told about the dowry demand and also that she was made to sign three blank papers. He also admits that the affidavit of the complainant was got prepared on 26.6.1994.

PW-5 Kuldip Kumar states that he was in Kalka on 15.5.1994 and when he was coming on the railway line he heard a noise from the street. When he went to the spot from where he heard the noise, he saw that the complainant was crying and that her clothes were drenched with Kerosene oil. He did not talk to her, but on the next day he informed her father about the incident. He was declared hostile and admitted that he had made his statement, Ex.PW-4/A to the police under Section 161 Cr.P.C. He, however, denied the fact that he had made any statement that the complainant had told him that her husband and father-in-law were demanding Rs.50,000/- and one scooter. In cross examination by the defence he states that the father is known to him for the last 16-17 years and he is on the visiting terms with the family.

He states that after he had seen the occurrence at about 10-11 a.m. he came back from Kalka and visited the house of Raj Krishan (father of the complainant) on the same evening and informed him about the occurrence.

PW-6 Hari Ram is a practicing Advocate at Kalka. According to him accused Nand Kishore had come to him in June, 1994 with Rs.3/- stamp paper to prepare a document on behalf of his daughter-in-law. He had accordingly drafted the statement of the daughter-in-law about her attempt to commit suicide. He further disclosed that the stamp paper was not signed by Rajni Bala. He admitted that he normally does not scribe any document if the executant is not present before him. The other witnesses are not very relevant and some of them have turned hostile.

The accused have only produced one witness, namely Kuldip Singh as DW-1. He states that on 9.6.1993 only the wedding of the son of Nand Kishore was fixed with the complainant. No wedding took place on 9.6.1993 and the marriage ceremony took place on 20.6.1993. He states that in his presence the complainant and her family were informed that wedding would be performed at Kalka according to Sikh rites without any dowry. He has also proved the certificate, Ex.D-1 to show that the complainant and the accused, Raka Soni were married on 20.6.1993.

A perusal of the evidence shows that the prosecution is riddled with inherent contradictions. The complainant has tried to show that the wedding took place at Nalagarh on

9.6.1993. This does not appear to be correct. Admittedly on 9.6.1993 the girl and the boy and the families met for the first time. It cannot be believed that on the same date the parties consented for the wedding and the wedding took place. No relatives, friends or acquaintances were admittedly called on 9.6.1993. On the other hand, all the witnesses admit that the wedding was held at Kalka on 20.6.1993. Whereas according to the complainant and her mother at Nalagarh the wedding was performed as per Hindu rites, even her father states that at Nalagarh the wedding was performed according to the Sikh rites. There was no hurry to get the parties married on the first date itself. Therefore, the prosecution case that the parties were married on 9.6.1993 appears to be totally incorrect. Why did the prosecution and the complainant party give this false statement? This has not been explained by them. The story of the complainant being burnt is also totally unbelievable. This incident has not been proved in accordance with law. Whereas in the complaint the complainant alleges that accused Nos. 3 and 4 put kerosene oil on her and her clothes caught fire, in the witness box she disowns her allegation that her clothes caught fire. She stated that her clothes were actually not burnt, but only torn. Though it is alleged that she was taken to Civil Hospital at Kalka, no record from the said hospital has been produced.

No reliance can be placed on the statement of PW-5 Kuldip Singh, who is alleged to be an eye witness. He admits that he knows the father for many years. He happened to be in

the vicinity only by chance. If he had seen the occurrence taking place, he would have definitely asked the complainant, whose father was admittedly known to him for a long time, as to why she is crying and who had poured kerosene oil on her. His statement also cannot be believed because according to him he informed the father of the complainant the same day or at least the next day. If that had been so, the parents of the girl would have immediately come to Kalka to save her. Obviously, he is a procured witness and no reliance can be placed on him.

Even with regard to the demand of dowry the evidence produced is totally unworthy of credence. The complainant herself admits that she had never made any complaint to her parents either about the maltreatment or about the demand of dowry till 25.6.1994 when she left her matrimonial home and started residing with her parents. If any demand of dowry had been raised in the period of almost one year after her marriage, it would have been but natural for her to have informed her parents and brother. Further, whereas PW-2 Raj Krishan, father of the complainant states that the accused had raised demand of dowry lastly on 31.7.1994, Virender Kumar (PW-4), brother of the complainant states that this demand was made by the husband on 30.6.1994 and thereafter the said accused never visited their house. PW-11 who was stated to be an eye witness for the dowry demand turned hostile and did not support the prosecution.

Keeping in view all the above facts it is quite clear that the prosecution has miserably failed to prove its case. There is no infirmity in the judgment of the trial court acquitting the accused. The appeal filed by the appellant is without any merit and the same is accordingly dismissed. Bail bonds furnished by the accused are discharged.

April 4, 2006(K) (Deepak Gupta), Judge